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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re:)	
)	Case No. 16-20326
POWELL VALLEY HEALTH CARE,)	
INC.,)	Chapter 11
)	
Debtor.)	

**OBJECTION TO APPLICATION FOR ORDER AUTHORIZING RETENTION
OF EISNERAMPER LLP AS ACCOUNTANT AND FINANCIAL ADVISOR
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Powell Hospital District (the “District”), by and through its undersigned counsel, Lewis Roca Rothgerber Christie LLP, hereby files its Objection to Application for Order Authorizing Retention of EisnerAmper LLP as Accountant and Financial Advisor to the Official Committee of Unsecured Creditors (the “Objection”) and states as follows:

INTRODUCTION

Conceptually, the District has no objection to the Committee hiring a financial advisor; however, to the extent the Committee seeks approval from the Court to allow its advisor to value property owned exclusively and solely by the District, the District objects.

Powell Hospital District is a special district organized pursuant to Wyo. Stat. § 35-2-401, *et seq.* The Debtor is a separate Wyoming nonprofit corporation qualified to do business

pursuant to Section 501(c)(3) of the Internal Revenue Code. The Debtor was created in 1992 for the purpose of leasing and operating the District's hospital facilities. Through the years, the District, as lessor, and the Debtor, as lessee, entered into several lease agreements allowing the Debtor to lease real property, equipment, furniture and fixtures from the District in order to ensure the availability of hospital facilities for the provision of health care services to and around Powell, Wyoming.

Notwithstanding the fact that the Debtor and the District are entirely separate and distinct legal entities and operate in a manner consistent with their separateness, the Committee asserts, without legal or factual support, that the District controls the Debtor. Based on this assertion, the Committee requests approval to employ a financial broker which purportedly will value real property, equipment and other assets owned exclusively by the District.

BACKGROUND

1. On May 16, 2016 (the "Petition Date"), Powell Valley Health Care, Inc. ("PVHC" or the "Debtor") filed a Voluntary Petition for relief under Chapter 11 of Title 11 of the U.S. Bankruptcy Code (the "Bankruptcy Code") with the U.S. Bankruptcy Court for the District of Wyoming (the "Court").

2. On June 21, 2016, the United States Trustee appointed an Official Unsecured Creditors' Committee in the Debtor's case (Docket No. 145). Thereafter, on July 14, 2016, the Official Committee of Unsecured Creditors (the "Committee") sought to employ Spencer Fane LLP as its counsel (Docket No. 217). On July 19, 2016, this Court approved the hiring of Spencer Fane LLP as counsel for the Committee (Docket No. 219).

3. On October 24, 2016, the Committee, through its counsel, filed its Application for Order Authorizing Retention of EisnerAmper LLP as Accountant and Financial Advisor to the Official Committee of Unsecured Creditors (Docket No. 349) (the “Application”). The Application, *inter alia*, seeks approval from this Court so that the Committee may employ a financial advisor to perform various financial services for the Committee, including the valuation of non-debtor property, namely property owned by the District that is leased to the Debtor.

OBJECTION

4. In the Application, the Committee asserts, without any support or credible evidence, that the District is an “insider and controls the Debtor.” *Application*, p. 2 and p. 3, ¶ 11. The Committee further asserts that “given the fact that the District controls the Debtor, it is in need of its own financial advisor to interface with Debtor’s financial advisor and maximize the value of the estate for the Debtor’s creditors.” *Application*, p. 3, ¶ 11.

A. There Has Been No Finding that the District is an Insider of the Debtor or Otherwise Controls the Debtor

5. As noted above, the Committee’s statement that the District “is an insider and controls the Debtor” has no basis in fact or law. Indeed, the Committee has not cited any legal authority, order or other pleading that would support or otherwise indicate that the District controls the Debtor. Instead, this erroneous assertion is made in support of this Court entering an Order that would *arguably* allow the Committee’s financial advisor to appraise or value non-debtor assets that are completely separate from the Debtor and owned solely by the District. *See* Application (“The contemplated role of the Committee’s financial advisor would be to: . . . advise the Debtor with respect to the valuation of assets that are alleged to be owned by the District . . .” and “The services that EisnerAmper is to render include . . . [e]valuate the property claimed to be owned by the District and consult with the Committee and Committee’s counsel

regarding financial issues related to the District . . .”). There is no legal or factual basis to allow the Committee’s financial advisor to value the District’s property.

B. The Committee’s Application is an Attempted End-Run Around Requesting and Receiving Substantive Relief from this Court or Another Court of Competent Jurisdiction

6. The Committee’s Application is an attempt to avoid seeking substantive relief against the District by obtaining an Order from this Court that arguably would allow it to value the District’s assets in conjunction with its valuation of the Debtor’s assets.

7. Moreover, in order for the Committee to even allege that a non-debtor’s assets should be incorporated into a plan, something the Committee appears to be implicitly requesting through its Application, there must be some adjudication or finding that would allow for the same. *In re Jefferson Cnty., Ala.*, 474 B.R. 228, 254 (Bankr. N.D. Ala. 2012) (“property interests that a debtor did not have as of the filing of a bankruptcy case do not become property of the estate or property of a debtor unless some provision of the Bankruptcy Code would enable a post petition expansion beyond what were a debtor’s property interests on filing a bankruptcy case”) (citing in *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205-06, 209-10 (1983).

8. Indeed, the Committee has not sought any affirmative relief under the Bankruptcy Code or otherwise in order to allege that the District’s completely separate and distinct property interests should be incorporated into the Debtor’s bankruptcy case for proposing a plan of reorganization. Although the Committee continues to assert that it may bring claims against the District for alter ego, piercing the corporate veil or substantive consolidation, no pleading has been filed requesting the same.

9. That is likely because alter ego and/or piercing the corporate veil theories are inapplicable to governmental entities, municipalities and/or special district entities. Moreover, the “veil-piercing doctrine is a means of transferring liability for the acts of a corporation to its *equity holders*.” *In re Katz v. Holzberg*, 2013 WL 5523488 (D.N.J. Oct. 2, 2013) (emphasis added). In fact, as noted by the Sixth Circuit, “no court has gone so far to suggest that a municipality can be bound by contracts entered into by a corporation and a third party.” *Foster Wheeler Energy Corp. v. Metro. Knox Solid Waste Auth.*, 970 F.2d 199, 204 (6th Cir 1992). *Foster* has been adopted by numerous courts agreeing that alter ego or veil piercing theories have no applicability in the context of municipalities or special districts. *See, e.g., McDaniel v. Board of Educ. of City of Chicago*, 956 F.Supp.2d 887, 896 (N.D. Ill. 2013); *In Newcrete Prod. v. City of Wilkes-Barre*, 37 A.3d 7 (Pa. Commw. Ct. 2012); *Swan v. Bd. of Educ. of City of Chicago*, 2013 WL 3455860 (N.D. Ill. July 9, 2013). Furthermore, undersigned counsel can find no legal authority where a special district was voluntarily or involuntarily consolidated with another debtor. This is understandable, because any attempt to do so would likely violate the Tenth Amendment of the U.S. Constitution and 11 U.S.C. §§ 903 and 904 of the Bankruptcy Code.

10. While reserving all of its rights with regard to this Objection and any other or additional arguments, the District objects to the Committee’s Application to the extent the Committee intends for EisnerAmper LLP to be employed for the purpose of valuing the District’s assets or any other non-debtor property.

WHEREFORE, Powell Hospital District respectfully objects to the Application for Order Authorizing Retention of EisnerAmper LLP as Accountant and Financial Advisor to the Official Committee of Unsecured Creditors and requests such other and further relief as may be just and proper under the circumstances.

Respectfully submitted this 3rd day of November, 2016.

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s/ Chad S. Caby

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 3, 2016, a true and correct copy of the foregoing OBJECTION TO APPLICATION AUTHORIZING RETENTION OF EISNERAMPER LLP AS ACCOUNTANT AND FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FILED BY POWELL HOSPITAL DISTRICT was mailed by depositing same in the United States mail, first-class postage prepaid, addressed to the CM/ECF registered attorneys and parties in interest at the addresses of record on the Court's electronic database as of the date of service of the above. See attached Service List.

s/ Kimberly Means

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